

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL A. UMNEY and DOUGLAS E. VANN

Appeal No. 99-0612
Application No. 08/772,958¹

ON BRIEF

Before McCANDLISH, Senior Administrative Patent Judge, ABRAMS,
and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 5 through 8 and 11 through 16, which are all of the claims pending in this application. Claims 2 through 4, 9, 10 and 17 were canceled in an amendment after final rejection filed February 10, 1998.

¹ Application for patent filed December 24, 1996.

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We REVERSE.

BACKGROUND

The appellants' invention relates to a braze bracket for being brazed to a tube or a duct of an aircraft engine. The braze bracket includes "a braze surface which is brazed to an engine tube or duct" (specification, page 1) and a plurality of tangs extending from the braze surface. The braze bracket of the invention is attached to a main bracket body using the plurality of tangs. After the braze bracket has been brazed to the engine tube or duct and attached to the main bracket body, the resulting assembly is secured to the aircraft engine (specification, page 2). A further understanding of the invention can be derived from a reading of exemplary claims 1, 8 and 14, which appear in the appendix to the appellants' brief.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Pauli et al. (Pauli)
1995

5,427,339

Jun. 27,

The following rejection is before us for review.

Claims 1, 5 through 8 and 11 through 16² stand rejected under 35 U.S.C. § 103 as being unpatentable over Pauli.

The complete text of the examiner's rejections and response to the argument presented by the appellants appears in the answer (Paper No. 11, mailed May 18, 1998), while the complete statement of the appellants' argument can be found in the brief (Paper No. 10, filed May 5, 1998) and reply brief (Paper No. 13, filed July 20, 1998).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellants and the

² Claims 1 through 3, 6, 8, 9, 12 and 14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Pauli and claims 4, 5, 7, 10, 13, 15, 16 and 17 were rejected under 35 U.S.C. § 103 as being unpatentable over Pauli in the final rejection (Paper No. 6). Claim 11 was not included in the statement of the rejections in the final rejection, but was indicated as being rejected in the Office action summary sheet accompanying the final rejection. In an amendment after final rejection filed February 10, 1998, claims 2 through 4, 9, 10 and 17 were canceled and independent claims 1, 8 and 14 were amended to include the limitations of claims 2 through 4, 9 and 10 and 17, respectively. In the advisory action mailed February 23, 1998, the examiner indicated that the amendment would be entered and indicated that claims 1, 5 through 8 and 11 through 16, the only pending claims, stand rejected. On page 2 of the brief, in the Status of Claims section, the appellants state that "[c]laims 1, 5-8 and 11-16 are pending and stand rejected" and this statement is acknowledged as being correct on page 2 of the answer. Accordingly, based on the record as a whole, we interpret the examiner's statement of the rejection on page 3 of the answer as including claims 1, 5 through 8 and 11 through 16. The appellants are apparently not prejudiced by this interpretation since it is clear from the brief that the appellants also understood claims 1, 5 through 8 and 11 through 16 to be rejected under 35 U.S.C. § 103 as being unpatentable over Pauli (brief, page 6).

examiner. As a consequence of our review, we make the determinations which follow.

We cannot sustain the standing 35 U.S.C. § 103 rejection of claims 1, 5 through 8 and 11 through 16.

Independent claims 1 and 8 recite a "braze bracket" comprising, *inter alia*, "a mounting plate having a curved braze surface" and a plurality of tangs "extending substantially radially from said curved braze surface" and "spaced along at least one edge of said braze surface". Pauli discloses a hose guide for guiding a hose around a tire of a parked vehicle or for storing a coiled hose (see Figures 5 and 6). In rejecting the claims, the examiner implicitly concedes that Pauli does not disclose a plurality of tangs "spaced along at least one edge of said braze surface" but asserts that to space the tangs apart would have been obvious "to make the device lighter, cheaper or to facilitate cleaning" (answer, page 3). We do not agree.

Initially, we agree with the appellants (brief, page 15) that the provision of cut-outs or spaces between segments of the lip portions (32,33) of Pauli would be undesirable, because of potential catching or snagging of the hose by the

spaced edges of the segments of the lip portions. Moreover, we find the examiner's conclusion that the provision of spaces or cut-outs in the lip portions would make the device cheaper or easier to clean to be speculative. In fact, a hose guide having cut-outs would be a more complicated device than that disclosed by Pauli and, consequently, would likely be more expensive, not cheaper, to manufacture and more difficult, not easier, to clean. While a hose guide having spaces or cut-outs in the lip portions would be lighter than the hose guide of Pauli having continuous lip portions, we can find no teaching or suggestion as to why one of ordinary skill in the art would have been motivated to reduce the weight of the hose guide of Pauli, especially in view of the other consequences noted above. The mere fact that Pauli could be modified to make the tangs spaced apart would not have made the modification obvious unless the prior art suggested the desirability of the modification. See In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Accordingly, it is our opinion that the examiner has not established a *prima facie* case of obviousness.

We additionally note that the claims recite a "braze bracket for being brazed to a tube or a duct member" having a "braze surface".³ Pauli, on the other hand, discloses a hose guide. We find nothing in the disclosure of Pauli which would indicate that the hose guide is a "braze bracket" of the type described by the appellants on page 1 of the specification.

For the above reasons, we cannot sustain the 35 U.S.C. § 103 rejection of independent claims 1 and 8, or of claims 5 through 7 and 11 through 13 which depend therefrom.

As to the rejection of independent claim 14, we note that claim 14 requires "a mounting plate having a curved braze surface" and "at least one opening in said mounting plate." While Pauli does disclose apertures (25, 26) in the hose guide, these apertures are in the thin flat base member (20), not in the arcuate collar member (30) which has the curved surface. The examiner asserts that it would have been obvious to provide the surface of the hose guide of Pauli with openings "to make the device lighter, cheaper or to facilitate cleaning." For the reasons discussed above, we find the

³ As described by the appellants, a "braze surface" is a surface which is brazed to another part (specification, page 1).

examiner's conclusion that a hose guide having openings in the surface thereof would be cheaper or easier to clean to be speculative.

While a hose guide having openings in the arcuate collar member thereof would be lighter than the hose guide of Pauli having no such openings, we can find no teaching or suggestion as to why one of ordinary skill in the art would have been motivated to reduce the weight of the hose guide of Pauli, especially in view of the other consequences noted above. Accordingly, it is our opinion that the examiner has not established a *prima facie* case of obviousness.

Moreover, we note that claim 14, like independent claims 1 and 8 discussed *supra*, recites a "braze bracket." We do not find that the hose guide of Pauli is a "braze bracket" of the type described by the appellants.

Therefore, we cannot sustain the standing rejection of independent claim 14, or of claims 15 and 16 which depend therefrom, under 35 U.S.C. § 103.

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CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 5 through 8 and 11 through 16 under 35 U.S.C. § 103 is reversed.

REVERSED

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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)	
)	
)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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APPLICATION NO. 08/772,958

APJ BAHR

APJ MCCANDLISH

APJ ABRAMS

DECISION: **REVERSED**

Prepared By: Carolyn Whitfield

DRAFT TYPED: 11 Feb 00

FINAL TYPED: